IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 1579 of 2005(K)

OS.747/1998 of III ADDL. M.C.,THRISSUR

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PETITIONER: APPELLANT:

N.SYAMALA DEVI,
W/O. LATE V.P. SETHUNATHAN, `KRISHNADEEPTHI',
NADUVATTAM DESOM, BEPPUR VILLAGE, KOZHIKODE TALUK
AND DISTRICT.

BY ADV. SRI.C.D.DILEEP

RESPONDENTS:

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1. STATE WIN KURIES AND LOANS PVT. LTD.,
CHEMBUKKAVU VILLAGE, THRISSUR TALUK.

2. THE MANAGER,
CATHOLIC SYRIAN BANK, MAKKARAPARAMBU BRANCH.

3. ANNIE CHACKO, W/O.VENNUKKARAN V.D.CHACKO
NELLANGARA VILLAGE, PERINGAVU VILLAGE, THRISSUR.

4. V.D.CHACKO, S/O. VENNUKKARANI DEVASY,
NELLANGARA VILLAGE, PERINGAVU VILLAGE, THRISSUR.

BY ADV. SRI.PETER THARAKAN
SRI.DILIP J. AKKARA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE JUDGMENT OF MUNSIFF COURT, THRISSUR IN O.S.747/1998 DTD.28.7.1999.

EXT.P2 TRUE COPY OF THE ATTACHMENT ORDER ISSUED BY THE MUNSIFF COURT, THRISSUR IN E.P.496/2000 DTD. 7.12.2004.

TRUE COPY

P.A.TO JUDGE

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PIUS C. KURIAKOSE, J.

W.P.(C) NO. 1579 OF 2005

Dated this the 21st day of June 2007

JUDGMENT

Ext.P2 order of attachment passed by the Execution court is under challenge in this writ petition instituted by the legal heirs of the deceased judgment debtor. Under Ext.P2, a sum of Rs.38,559/- is attached from out of a total amount of Rs.50,000/- which is retained by the Catholic Syrian Bank, garnishee, who is employer of the deceased judgment debtor in a suspense account in view of the bank's commitment to the first respondent decree holder that an undertaking. The issue that arises is whether the amount ordered to be attached are liable to be attached in terms of Section 60 1 (g) of the CP.C. There is some force in the contention that there is immunity from attachment of the gratuity in terms of the provisions of the Gratuity Act. But learned Munsiff has also found that no evidence has been produced by the petitioner to show that the amount

retained by the Catholic Syrian Bank (amount now ordered to be attached) represents the gratuity amount or Provident Fund). Admittedly a total amount of Rs.2,18,649/- was payable to the petitioner on account of his retiral benefits. A portion of this amount should have been gratuity and Provident Fund. The petitioner is now contending that the amount retained by the Catholic Syrian Bank in Suspense Account represents the Gratuity and Provident Fund. It is difficult to accept the above contention since it cannot be easily be assumed that the public institutions like the Bank will retain the statutory benefits which are statutorily payable to a party in Suspense Account and release other amounts to the parties. Whatever that be, the learned Munsiff was justified in observing that the petitioner did not adduce any evidence to show that the amount under attachment represents gratuity or provident fund.

2. I do not find any warrant for correcting Ext.P2 under this court's supervisory jurisdiction under Article 227. The challenge against Ext.P4, accordingly, is repelled. At the same time, considering the request of the counsel for the petitioner for grant of time for convincing the court below that the amount

retained by the bank actually represents the unattachable portion of the retiral benefits. Even as I dismissed the writ petition, I direct the court below to keep the impugned order in abeyance for a period of three more months from today. It is open to the petitioner to obtain necessary certificate from the Bank regarding the split up figures of the retiral benefits actually due to him and produce the same before the court below. The bank is also directed to show specifically in that certificate as to whether it was the gratuity and provident fund portions of the retiral benefits which was released to him already. The court below will consider the documents to be produced by the petitioner pursuant to the above direction and if necessary will reconsider Ext.P2. If no materials are placed by the petitioner within the aforesaid time limit, the judgment confirming the impugned order will operate.

PIUS C. KURIAKOSE,
JUDGE.

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